IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO : 567 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 05/11/2003 in WP No. 22642 OF 2003 on the file of the High Court.)

Between:

K.R. Mohan Reddy, s/o late K.Satyanarayana, Civil Engineer & Contractor, r/o 6-3-856/A/3, Ameerpet, Hyderabad

..... APPELLANT

AND

1. The Government of AP, rep by its Principal Secretary, Transport, Roads & Buildings Department,
Secretariat, Hyderabad.
2.The Superintending Engineer, Roads & Buildings Department,
Head Quarters Circle, Khairtabad, Hyderabad.
3.The Executive Engineer, East Buildings Division, R&B, AC Guards, Hyderabad.
4.The Principal, Institute of Hotel Management,
Catering Technology & Applied Nutrition, Advanced Training Institute (ATI) Campus, F-Row, Durgabai Deshmukh Colony, Vidyanagar, Hyderabad.

.....RESPONDENTS.

Counsel for the Appellant: Mr.S.SHARAT KUMAR

Counsel for Respondent Nos. 1 to 3:G.P. for Roads & Buildings.

Counsel for Respondent No.4: Mr. L.Prabhakar Reddy

The Court made the following :

ORAL JUDGMENT:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

Appeal is against the order passed by the learned Single Judge dismissing the Writ Petition.

The petitioner-appellant was, on 19.2.1991, awarded a contract to execute some work by the respondents, which was to be completed by August, 1992. It was not completed in time, but, admittedly, was completed in October, 1993. Petitioner-appellant, thereafter, had been agitating about his claim that the delay in completion of the work was not attributable to him, but it was attributable to the respondents. Therefore, he laid a claim before respondents, and, admittedly, petitioner's representations to the Government dated: 27.4.1995 and 1.6.1995 were specifically rejected by Memo dated: 2.9.1995 saying that petitioner was not entitled to any claim, whatsoever, and, there was no liability on the part of the respondents to meet the claim.

Under the terms of the agreement, any claim above Rs.50,000/- in value has to be decided by Civil Court of competent jurisdiction by way of regular suit and not by arbitration. Petitioner failed to avail of the said provision, and, did not approach the Civil Court. Even under ordinary law, limitation to file suit expired in the month of October, 1996. Instead of approaching the Civil Court for adjudication of his rights, the petitioner continued sending representation after representation, which were not favourably considered. But, on 22.2.2003, the Principal Secretary to the Government addressed communication to the fourth respondent, on the petitioner's complaint, calling upon the fourth respondent to deposit Rs.21.26 lakhs as claimed by the petitioner, so that the same would be paid to the petitioner. Taking this as the basis, petitioner filed Writ Petition seeking enforcement of this communication dated: 22.2.2003 that respondents be directed to make payment of this amount to satisfy its claim. Learned Single Judge dismissed the Writ Petition on the ground that in a contractual matter, availment of remedy under Article 226 was misconceived. No

counter affidavit has been filed by the respondent in Writ Petition, since, there was no occasion to do so.

Writ Appeal was admitted, in which, counter affidavit was filed by the 3rd respondent saying that petitioner is taking undue advantage by quoting the proceedings of the Principal Secretary to the Government dated: 22.2.2003, which, in no way, forms a part of the contract or contractual conditions. Petitioner's claim already stood rejected by the Government for enhancement of payment for the work done beyond the agreed period by communication dated: 2.9.1995. Therefore, any claim made beyond the period of limitation, thereafter, was misconceived. Petitioner could have agitated the matter in Civil Court, but, failed to avail the said remedy, and, after expiry of the period of eight years from the date of the rejection of his claim, Writ Petition was misconceived.

While endorsing the view expressed by the learned Single Judge that in a contractual matter, filing of Writ Petition for enforcing the claim is misconceived, and, on the other ground of filing such a petition after expiry of period of limitation also, during which petitioner could have availed the remedy before the Civil Court, the Writ Petition is not maintainable. The Writ Appeal, therefore, is dismissed. No costs.

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DEVINDER GUPTA, C.J.

24.11.2004.

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M.NARAYANA REDDY, J.

VR.

To

1. The Principal Secretary to Government of AP, Transport, Roads & Buildings Department, Secretariat, Hyderabad.
2.The Superintending Engineer, Roads & Buildings Department,
Head Quarters Circle, Khairtabad, Hyderabad.
3.The Executive Engineer, East Buildings Division, R&B, AC Guards, Hyderabad.
4.The Principal, Institute of Hotel Management,
Catering Technology & Applied Nutrition, Advanced Training Institute (ATI) Campus, F-Row, Durgabai Deshmukh Colony, Vidyanagar, Hyderabad.

5. Two CCs to Government Pleader for Roads & Buildings, High Court Buildings, Hyderabad (OUT).

6. Two CD copies.